



# News & Notes

## 2015 Governor's Award for Safety Excellence Winners Announced

Governor Tom Wolf recently announced the eight employers who will be honored this year with a Governor's Award for Safety Excellence. The Governor's Award for Safety Excellence recognizes employers that have achieved the highest standards in workplace safety. Any Pennsylvania employer is eligible for the Governor's Award for Safety Excellence. Information and criteria used to determine finalists include workplace injuries/illnesses vs. industry standards, as well as innovation and strategic development of safety policy and approaches.

- BDP International, Inc., Philadelphia County
- SimplexGrinnell, Lehigh County
- CFP, Inc., d/b/a Merry Maids, Northampton County
- Community Human Services, Allegheny County
- Rohrer Corporation of Pennsylvania, Mifflin County
- Atlantic Packaging, Luzerne County
- Matric Limited, Venango County
- Trion Industries, Inc., Luzerne County

The application process for the Governor's Award for Safety Excellence is highly competitive. The award recognizes successful employer-employee safety programs that produce tangible safety improvements.

The eight 2015 Governor's Award for Safety Excellence winners are:

**Save the Date**  
**15th Annual WC Conference**  
**May 16 - 17, 2016**  
**Hershey Lodge and Convention Center**

## A Message from the Directors

*News & Notes* is a quarterly publication issued to the Pennsylvania workers' compensation community by the Bureau of Workers' Compensation (BWC) and the Workers' Compensation Office of Adjudication (WCOA). The publication includes articles about the status of affairs in the workers' compensation community as well as legal updates on significant cases from the Commonwealth Court.

from the bureau, WCOA, and WCAB regarding upgrades to WCAIS, as well as an important notice from the Claims Division about EDI coding changes. Also included is a message for healthcare providers and professionals, insurers, and TPAs regarding the Center for Medicare Services' implementation of ICD-10. Additionally, we continue to feature the outstanding article entitled "A View from the

Among the articles featured in this edition are notices

*Continued on page 2*

### Inside this Issue

WCOA WCAIS Enhancements .....	2
WCAB WCAIS Enhancements .....	2
BWC WCAIS Enhancements .....	3
Recent and Upcoming EDI Code Changes.....	4
Regarding ICD-10 Implementation.....	4
BWC Appoints Administrative Division Chief .....	5
Governor's Occupational Safety & Health Conference.....	5
PA Training for Health & Safety (PATHS) Update.....	6
Kid's Chance Scholarship Recipient's Story .....	6
About Kid's Chance of Pennsylvania .....	7
A View from the Bench.....	7

### Safety Committee Box Score

Cumulative number of certified workplace safety committees receiving five percent workers' compensation premium discounts as of Sept. 22, 2015:

**11,099 committees covering  
1,451,887 employees**

Cumulative grand total of employer savings:  
**\$588,062,445**

*Employer Information Services*  
717-772-3702

*Claims Information Services*  
toll free inside PA: 800-482-2383  
local & outside PA: 717-772-4447

*Only People with Hearing Loss*  
toll free inside PA TTY: 800-362-4228  
local & outside PA TTY: 717-772-4991

*Email*  
ra-li-bwc-helpline  
@state.pa.gov

*Auxiliary aids and services are available upon request to individuals with disabilities.  
Equal Opportunity Employer/Program*

## A Message from the Directors

*Continued from page 1*

Bench,” in which judges from the Pennsylvania Workers’ Compensation Judges Professional Association summarize recent key decisions from the Commonwealth Court that are of interest to all workers’ compensation attorneys.

We trust that stakeholders in the Pennsylvania workers’ compensation system will find this publication interesting and informative, and we invite

your input regarding suggested topics for inclusion in future publications. Suggestions may be submitted to [RA-LIBWC-NEWS@pa.gov](mailto:RA-LIBWC-NEWS@pa.gov).

- Scott Weiant, Director – Bureau of Workers’ Compensation
- Elizabeth A. Crum, Director – Workers’ Compensation Office of Adjudication

## WCOA WCAIS Enhancement News

In the September release, WCOA made the changes below in WCAIS to enhance external stakeholders’ experience.

- 1) **“NEW” Notification on Dashboard.** The word “NEW” now appears on the dashboard when a new item has been added to the WCOA dashboard, such as a new briefing schedule, request, petition, answer, or judge communication. This alerts the user that something new has been added since the last time they viewed their WCOA dashboard.
- 2) **View Exhibit from Exhibit Proof of Service.** The exhibit proof of service document, which generates on the dashboard after an exhibit has been uploaded to a dispute, now contains a link to view the exhibit.
- 3) **Business Event Log.** Parties to the dispute now have access to the Business Event Log by clicking the link from the General Information tab of the Dispute Summary. This log shows a list of action items taken on the dispute, including but not limited to Event Scheduled, Petition/Answer Filed, Correspondence Generated, Exhibits Added, and Request Submitted. Additionally, this log also includes now the name of the party who took the action and the date the action was taken.
- 4) **Prevent Answer Filing on Utilization Review Petitions.** The ability to file an answer on a UR petition has been removed, per the Medical Cost Containment Regulation Section 127.554.
- 5) **Misfiled Petitions.** When petitions are filed under the wrong claim, parties on that incorrect claim are able to access the confidential information on the misfiled petition. WCOA staff members now have the ability to mark that petition as “misfiled,” which will prevent parties from viewing confidential information filed in error.
- 6) **Med Fee Review Unique Disputes.** For both online and paper submissions, WCAIS will create a unique dispute for each Med Fee Review selected during the process.

## WCAB WCAIS Enhancement News

In the September WCAIS system update, the Workers’ Compensation Appeal Board (WCAB) made the following improvements for external users:

1. TPA Users and Admins will have access to all tabs on Claim, Dispute, and Appeal Summary screens for which they are listed as an Interested Party.
2. In the Higher Court Appeal History table, a new column called Determination will display the status of Allocatur Order and the Commonwealth Court Decision. Notes added on the Petition for Review screen will appear in the Transmittal Letter. The Certification and Transmittal Letter will be automatically generated when the user selects submit.
3. When an Answer is uploaded, it should display on the General WCAB Petition Information screen in the Details table and in the Documents and Correspondence tab for all external parties.
4. An attorney may not request an Entry of Appearance on behalf of any user type if that user type already has an attorney listed as both an Interested Party and an Additional Defendant.
5. When a decision is amended and an external party files an appeal on both the amended decision and the original decision, the Proof of Service will have the Circulation Date of the Decision selected by the external party.

*Continued on page 3*

## WCAB WCAIS Enhancement News

*Continued from page 2*

6. Proof of Services for the following will now be generated instantly: Abeyance Request, Withdrawal Request, Answer, Appeal, WCAB Petitions, and Briefs.

As always, if an external user has questions, they may call WCAB at 717-783-7838.

## BWC WCAIS Enhancement News

In the September release, the following enhancements were incorporated into the Workers' Compensation Automation and Integration System (WCAIS).

- Self-Insurance Updates
- EDI Updates

### Self-Insurance Updates:

The annual renewal submission process has been redesigned for a more user-friendly approach to the renewal application. Information that doesn't change from year to year is pre-filled and can be edited with updates. WCAIS now allows you to navigate between tabs, which several SI users requested. You will also be able to see which tabs have been completed; those shown with a green checkbox indicate completion, and yellow checkboxes indicate those not yet completed.

- The number of tabs has been greatly reduced. The Applicant tab now houses all the applicant information and includes a confirmation of current company contacts.
- All screens now have the ability to "Cancel," "Preview," "Save as draft," and "Save and Continue." "Save as draft" allows you to stop without completing that tab, come back in, and finish it without losing the information you already entered.
- Financial Info/Credit Rating tab no longer asks for quick assets. This will be calculated by the Self-Insurance accountant.
- Claims and Payment Data will now require the LIBC-810 and Loss Year Tables to be uploaded as Excel worksheets only. You can work with your actuary if you have any questions. We have found that the majority of the LYT were already in the Excel format.
- Excess Insurance and Security will prefill with your current data and include a notice to "Please contact the Self-Insurance Division for any changes in Excess Insurance Coverage."
- Affiliate Information will show if you have an affiliate in application status, meaning that it hasn't been approved yet. This will help to prevent duplicating an affiliate already in progress by showing it in a separate table.
- Certify tab has a new attestation form, showing the verbiage that the attester is signing for.

Additionally, we are now asking for a list of corporate officers or partnership principals, as well as the name and title of all individuals authorized to execute and submit application and documentation on behalf of the applicant and its affiliates.

- You can now print the application prior to submission, and you can preview every tab for its completeness.

### EDI Enhancements:

We previously sent notification to our stakeholders regarding the following three WCAIS enhancements, which were launched in September. Updates to your procedures should have been made to accommodate the following system improvements:

- Claim Type code is now mandatory on all FROI transactions. In April we announced we would be mandating the use of the Claim Type code on all FROIs, to improve reporting in WCAIS. This update improves the accuracy of each claim and allows the bureau to provide the community with more accurate figures of how many indemnity and medical-only claims occur in Pennsylvania per year. In order to minimize erroneous filing, be certain that your operating system has been updated to identify the Claim Type code as mandatory.
- When a SROI PY is received with a settlement code, no update to the claim status will occur in WCAIS. Although the adjuster should still accept or deny the claim prior to submitting the PY with a settlement code, this particular update allows a Compromise and Release to be reported without altering the claim status, as those adjusters choosing to apply the "W" are finding that it currently sets the claim as Temporary. In that scenario, the code update will not change the claim status when a "W" is assigned to a SROI PY along with a settlement code. This update also allows for a SROI FN to be submitted following a full settlement, should that scenario apply, in order to reduce EDI rejections.
- A SROI IP will now accept after a SROI 02 has updated the Agreement to Compensate code to "L" and made the claim Compensable. This update allows an adjuster to continue reporting the first payment made on a claim using the SROI IP.

## Recent and Upcoming EDI Code Changes

In September 2015, Claim Type code became mandatory on all FROI transactions, requiring an update to your systems in order to prevent rejections caused by a missing Claim Type code. Mandating the Claim Type code on all FROIs improves reporting in WCAIS and the accuracy of each claim. It also allows the bureau to provide the community with a more accurate count of indemnity and medical-only claims occurring in Pennsylvania each year.

In March 2016, there will be four additional coding changes that will require you to update your EDI coding in order to prevent a rejection. These changes are necessary for completion of the Forms Solution project, which will allow elements provided on EDI transactions to generate LIBC forms, beginning in June 2016. The four coding changes are:

- Claim Type code (DN0074) 'M' (Medical Only) will no longer accept on a SROI IP, to match IAIABC standard.
  - Starting in March, submission of a SROI PY with Claim Type code 'M' will be the only way to report the EDI equivalent of a medical-only NCP, TNCP, or Agreement. The IP is the EDI equivalent of an indemnity NCP or TNCP, whereas the PY is the EDI equivalent of a medical-only NCP or TNCP, so the IP shouldn't come into play with a medical Claim Type code. When we go live with Forms Solution, we want to make sure the correct form is generated with the correct fields.
- Claim Type code will become mandatory on the SROI AP, to match the SROI IP.
  - The AP is the first indemnity payment reported on a claim after a new TPA has acquired it, so the standards we use for the IP should be the same on the AP.
- The Initial Date Disability Began (DN0056) will be mandatory on the SROI IP and mandatory conditional on the SROI PY (DN0056 will be required if the Claim Type code on the PY is 'I' for Indemnity).
  - We will be using this date to populate the NCP and TNCP in Forms Solution, in addition to using the field to calculate the 90-day temporary period for an indemnity claim. If we don't have it, we cannot accurately populate the forms or determine when an indemnity claim will convert.
- Average Wage (DN0286) will be mandatory on the SROI AP, IP and mandatory conditional on the SROI PY (DN00286 will be required if the Claim Type code on the PY is 'I' for Indemnity).
  - This field will be used to populate the Average Weekly Wage field on an indemnity NCP and TNCP generated by an EDI transaction. This field should be pulled from the Average Weekly Wage field on the Statement of Wages (LIBC-494C).

## Regarding ICD-10 Implementation

The department has recently received a number of inquiries regarding the Center for Medicare Services' (CMS) upcoming implementation of ICD-10. Please note that the Pennsylvania Workers' Compensation Act's (act) Medical Fee Schedule does not rely on ICD-9 or ICD-10 codes to determine appropriate fees for treatment. Instead, the fee schedule relies upon HCPCS, CPT, DRG and service/revenue codes to determine the applicable reimbursement rate. Notably, the Center for Medicare Services has reminded providers and payors that "the change to ICD-10 does not affect CPT coding for outpatient procedures and physician services." See, <https://www.cms.gov/Medicare/Coding/ICD10/index.html?redirect=/ICD10>.

***Providers and payors should refer to guidance issued by CMS to determine when the use of ICD-10 is appropriate or required.***

Furthermore, while ICD-10 PCS may result in changes to providers' inpatient billing practices, inpatient acute care providers reimbursed by DRGs must continue to "cross-walk" DRGs to the frozen grouper, as set forth in 34 Pa. Code §§ 127.110-.116, 127.154.

Of course, implementation of ICD-10, and the additional information it is expected to provide, may also cause payors to alter the means by which they adjust and pay medical bills; however, the department's review of such bills will continue to take place as described in the act and regulations promulgated thereunder.

## BWC Appoints New Administrative Division Chief

BWC is pleased to announce the recent appointment of Mistie Snyder as the new Administration Division chief. Mistie has been a member of the BWC family for many years and brings experience, knowledge, and expertise to her new role.

Mistie joined the bureau in 1994 as a clerk typist in the Claims Management Division, later becoming a secretarial supervisor in the Bureau Director's Office. She was promoted to Information Services Helpline manager in 2008, and in 2013 she became the bureau's annual conference coordinator, a position she continues to serve in.

In Mistie's new duties, she has oversight of all Administration Division functions. The division is responsible for preparing the yearly budget request for the Administration Fund as well as projecting, analyzing, and reporting on fund expenditures.

Additional responsibilities include the oversight of numerous business functions, such as processing requests and procuring supplies, equipment, and furniture for the bureau, the Workers' Compensation Appeal Board, and the Workers' Compensation Office of Adjudication; providing administrative support to all bureau divisions and field offices; and coordinating leases and the relocation/renovation of bureau offices. Additionally, she is responsible for overseeing the mailroom, scanning and indexing



services, personnel advice and services, and the coordination of bureau training.

Please join BWC in congratulating Mistie and wishing her success as the new Administrative Division chief.

## Governor's Occupational Safety & Health Conference



**Call 800-437-7439  
to make reservations at  
The Hershey Lodge**

**Join us for the  
2015 Pennsylvania Governor's  
Occupational Safety & Health Conference  
Oct. 26 – 27, 2015  
Hershey Lodge & Convention Center**

This annual safety conference brings safety professionals together for education, innovation, best practices, new products, and services. Join us this year and see why the GOSH Conference has been Pennsylvania's premier safety and health event for almost nine decades. Tens of thousands have attended since its inception.

[Click here](#) to view the complete invitation PDF.

Registration details can be found at  
[www.pasafetyconference.com](http://www.pasafetyconference.com)

**Questions? 717.441.6043 /  
[GOSHConference@WannerAssoc.com](mailto:GOSHConference@WannerAssoc.com)**

See you soon!

# PA Training for Health and Safety

## “PATHS” Your No-Fee Safety Training Resource

The Pennsylvania Bureau of Workers' Compensation, Health and Safety Division's PATHS (PA Training for Health and Safety) is still growing by leaps and bounds! The number of topics has now reached 138, one of the newest being the timely "School Safety." The popularity numbers of this extraordinary FREE resource initiative continue to grow as well, with 24,660 individuals trained as of Aug.14, 2015, compared to 18,772 as of June 1, 2015, just a short time ago! Employers and employees from **44 states and four countries** have taken advantage of this program. You, too, may take advantage of

this outstanding free resource by going to PATHS at [www.dli.state.pa.us/PATHS](http://www.dli.state.pa.us/PATHS) or by contacting the Health and Safety Division at 717-772-1635. We can also be reached via email, at [RA-LI-BWC-PATHS@pa.gov](mailto:RA-LI-BWC-PATHS@pa.gov).

Keep up with the latest safety news, tips, and ideas, on our Facebook! You can find all this information and meet our team at <https://www.facebook.com/BWCSPATHS>. ENJOY!

## About Kids' Chance of Pennsylvania

Kids' Chance of Pennsylvania is proud to support talented students with our scholarships. These students would have otherwise been unable to pursue their educational dreams because their parent or parents were injured or killed in a work-related incident. Scholarship recipient Hanna L. shares her story:

"Thank you so much for the opportunity to receive a college education. Without your generous assistance, my goal of becoming a physician assistant might not have become a reality. I am so fortunate to have the chance to receive a Master of Physician Assistant Science degree at Saint Francis University because it has always been a dream of mine to study medicine. Hopefully, one day I will be a pediatric physician assistant, and I, too, will be able to help children. It will be in a different way than the help you've offered, but the outcomes will be similar.

I have always been interested in participating in mission trips and volunteering my services to free medical clinics. It will be a wonderful experience when the time comes, when I can offer my medical knowledge and training to help those less fortunate. My passion for medicine is only growing with each passing year of school. My future holds so much potential.

You have turned my father's work injury, which caused hardships to my family, into a chance for my sisters and I to attend college. I am already in my senior year at Saint Francis University and am thankful every day for the gift I was given of a college education. Please continue helping kids like myself to achieve their goal of earning a college degree. Thank you for opening my world to countless possibilities. I will return the favor one day and help others achieve their dreams."

Kids' Chance cannot assist students like Hanna



without your help. Please consider helping to spread our mission through your social media channels or on your website. If you'd like more information on how you can do so, please contact the Kids' Chance office at [info@kidschanceofpa.org](mailto:info@kidschanceofpa.org).

## About Kids' Chance of Pennsylvania

The mission of Kids' Chance of Pennsylvania, Inc. (Kids' Chance of PA) is to provide scholarship grants for college and vocational education to children of Pennsylvania workers who have been killed or seriously injured in a work-related accident resulting in financial need.

The hardships created by the death or serious disability of a parent often include financial ones, making it difficult for deserving young people to pursue their educational dreams.

[Visit our website to learn more.](#)

## A View from the Bench

Prepared by the Committee on Human Resource Development of the Pennsylvania Workers' Compensation Judges Professional Association.

### When LIBC-757 Need Not Be Provided

In *School District of Philadelphia v. WCAB (Hilton)*, No. 34 EAP 2104, WL 33 117 A.3d 232, filed May 26, 2015, the Pennsylvania Supreme Court held that an employer is not required to provide an injured employee with a "Notice of Ability to Return to Work" (LIBC-757) prior to offering the employee alternative employment when, at the time of the job offer, no work injury has been acknowledged under the Workers' Compensation Act and the claimant has not yet filed a claim petition. The essential facts, as summarized by the court, are set forth, in relevant part, in the following four paragraphs:

The record established that ...Claimant... was employed by the School District... (Employer) as a second grade teacher at the Frances D. Pastorius Elementary School (Pastorius Elementary) from November 24, 2008 to March 3, 2009. The second graders in Claimant's classroom engaged in significant misbehavior, including using profanity and engaging in physical violence, which prevented Claimant from teaching effectively and required her to speak louder than the classroom noise. After completing an assignment on March 3, 2009, the children became unruly and vandalized the room by knocking over desks and chairs, tearing down educational charts, and later ripping down a window shade. Claimant thereafter felt dizzy, could not eat, and suffered from tension headaches, heart palpitations, and nausea.

After school that day, Claimant went to a regularly scheduled appointment with her primary care physician, Dr. Wilfreta Baugh. Claimant informed Dr. Baugh of her symptoms and indicated that the anxiety arising from her employment was more than she could bear. As a result, a representative from Dr. Baugh's office called Employer and advised that claimant would not be returning to work due to the school's overly stressful environment.

Shortly after the incident, Claimant was treated by Employer's work physician, Dr. Frank Burke, who concluded that she could return to work at her regular duty job at Pastorius Elementary. Claimant returned to Pastorius Elementary a few weeks later, but stayed only four days, unable to continue working under the stress. Notably, on May 29, 2009,

Employer issued a notice of compensation denial, rejecting Claimant's contention that she suffered a work-related injury due to excessive stress on the job.

In June of 2009, Employer assigned Claimant to teach in the fall at a different school, the Jay Cooke School. Claimant met with the principal of that school and toured the facility, finding it to be the opposite of Pastorius Elementary in that it was very quiet and the instructors were able to teach the children effectively... (A) t the time the employer offered Claimant the alternative employment at the Jay Cooke School, she had not yet filed a claim petition... When school began in September of 2009, Claimant did not begin employment at the Jay Cooke School. Claimant maintained that she was unable to return to teaching because she was still under treatment for the job-related maladies that arose from her stressful working environment at Pastorius Elementary.

The WCJ granted the claim petition, but suspended the claimant's benefits as of Sept. 30, 2009, based on the job offer, finding that as of Sept. 30, 2009, the claimant was capable of performing the duties of the teaching position at the Jay Cooke School. The WCAB affirmed the WCJ's finding of a compensable work injury but reversed the order suspending the claimant's benefits, concluding "...that there was no evidence that Employer provided Claimant with Section 306(b)(3) notice of ability to return to work...(and)...Employer did not meet the threshold burden required to modify benefits." On appeal, the Commonwealth Court affirmed the granting of benefits but "...reversed the WCAB's ruling that the WCJ erred in suspending benefits..." *Sch. Dist. of Phila. v. WCAB (Hilton)*, 84 A.3d 372 (Pa. Cmwlth. 2014). The employer petitioned for review by the Supreme Court.

The Pennsylvania Supreme Court thoroughly discussed the legislative history of Section 306(b)(3) of the act, (added to the act in 1996 as part of the Act 57 amendments), and numerous prior Commonwealth Court opinions. The court noted that the Pennsylvania Association of Justice (PAJ) filed an *amicus* brief on behalf of the claimant. Near the end of the opinion, the court summarized the court's legal analysis as follows:

Simply put, as reflected in the legislative history,

*Continued on page 8*

## A View from the Bench

*Continued from page 7*

Section 306(b)(3) was intended to speak to an employer's burden in a suspension proceeding, after a compensable injury has been established, and was not meant to impose a requirement upon employers in all circumstances where alternative employment is offered to an injured employee. This critical fact distinguishes this case from the cases relied upon by the claimant to suggest that Section 306(b)(3) notice is required in the "claim setting."

### **Claimant Injured While Providing Emergency Care**

In *Pipeline Systems, Inc. v. WCAB (Pounds)*, No. 1577 C.D. 2014, 2015 WL 4078738, Pa. Cmwlth., filed July 7, 2015, the court provides a detailed discussion of the interplay between the course and scope of employment and Section 601(a)(10)(ii) of the act, which governs employees injured while "Rendering emergency care, first aid or rescue at the scene of an emergency."

The facts in this case, all of which were drawn from the claimant's credible testimony, were not in dispute. The defendant/employer was hired to install an addition to a borough sanitation plant, which required the installation of underground pipelines and manholes. On July 29, 2010, the claimant and three co-employees were installing new pipeline approximately 30 feet from a concrete pit located on the borough property. The claimant heard a borough employee call out for help, indicating that there was a "man down" in the concrete pit. The claimant and two of his coworkers rushed to the pit to provide assistance. Upon arriving at the pit, the claimant discovered a borough employee lying at the bottom of the pit. The claimant, along with the borough plant manager and an inspector from an engineering company also working at the site, descended the ladder into the concrete pit in an effort to assist the borough employee lying at the bottom of the pit. The borough employee lying at the bottom of the pit was already deceased. When the claimant stood up after examining the body, he began to have breathing difficulties and began to climb the ladder out of the pit. Before reaching the top of the pit, he lost consciousness and fell approximately 20 feet to the bottom of the pit. The claimant's claim petition alleged injuries to his left leg, knee, foot, ribs, back, head, and lungs. After the claimant fell into the pit, his co-employees determined that there was a poisonous gas in the pit and began pumping fresh air into the pit, utilizing a fresh air machine owned by the defendant/employer. The claimant was hospitalized following the fall.

Compensation Payable was issued. Prior to the expiration of the 90 day period, a Notice Stopping Temporary Compensation and Notice of Denial were issued. The claimant then filed a claim petition alleging the injuries set forth above. The defendant filed a timely Answer, denying that the claimant was

within the course and scope of employment at the time of the injury. At the initial hearing, the parties agreed to bifurcate the case to allow the Workers' Compensation Judge to determine the course and scope issue before embarking on the medical issues in the case. In an interlocutory decision and order issued on April 4, 2012, the Workers' Compensation Judge determined that the claimant was in the course and scope of employment. Subsequently, the judge issued a final decision and an amended decision, both granting the claim petition. The defendant appealed to the Workers' Compensation Appeal Board, which affirmed the judge's decision. The defendant then appealed to the Commonwealth Court.

The Commonwealth Court initially reviewed Section 301(c) of the act, noting that the term "injury arising in the course of employment" includes injuries that are sustained in the furtherance of the business of the employer, as well as other injuries that occur on premises occupied or controlled by the employer. 77 P.S. § 411. The court noted that there are two tests used to determine whether an injury was sustained "in the course of employment." These tests are found in *Kmart Corporation v. WCAB (Fitzsimmons)*, 748 A.2d 660, 664 (Pa. 2000) and *Marazas v. WCAB (Vitas Healthcare Corporation)*, 97 A.3d 854, 862 (Pa. Cmwlth. 2014).

The first test is whether the employee was actually engaged in the furtherance of the employer's business or affairs, regardless of whether or not the employee was on the employer's premises. In the second test, even if the employee is not engaged in furthering the employer's business or affairs, the employee may still be within the course and scope if: (1) the employee is on the premises occupied or under the control of the employer, or upon which the employer's business is being conducted; (2) the employee is required by the nature of his/her employment to be present on the premises; and (3) the employee sustains injuries caused by the condition of the premises or by operation of the employer's business or affairs thereon.

The court then reviewed the Supreme Court's prior holding in *Kmart*. In *Kmart*, the claimant was eating lunch in a restaurant on the employer's property when she came to the aid of a fellow employee, also present for the sole purpose of eating lunch, who was involved in an assault. Based on a review of the facts, the Supreme Court determined the employee in *Kmart* was not within the course and scope of employment at the time of the injury. First, the court noted that both the claimant and her co-worker were at lunch and that being involved in the intervening assault was "wholly foreign to her employment." The court also noted that the claimant was not required to eat lunch on the premises at the time of the incident and was not performing any job duties in furtherance of the employer's affairs at the time of the injury. As a result, the claimant failed to fit within the first test set forth above. The court then reviewed the second, three-prong test and again concluded the claimant was not in the

*Continued on page 9*

## A View from the Bench

*Continued from page 8*

course of employment. Specifically, while the claimant was clearly on the employer's premises at the time of injury, she was not required to be there by the nature of her employment. The court also rejected the claimant's argument that she had a duty to render aid to her co-worker, and that that duty was in furtherance of her employer's affairs. Finally, the Supreme Court explicitly rejected the argument that rendering aid is always to the employer's benefit, as it creates good will that may further employer's interests. The court dismissed this benefit to the employer as too tangential. Thus, for the reasons set forth above, the Supreme Court determined that the claimant in *Kmart* was not in the course and scope of employment.

The Commonwealth Court in the present case then noted that since the Supreme Court's holding in *Kmart*, the General Assembly has amended the act under Section 601(a)(10)(i)-(ii), 77 P.S. § 1031(a)(10)(i)-(ii) to include language that workers' compensation benefits will be awarded where the employee is "Rendering emergency care, first aid or rescue at the scene of an emergency." Here, the Workers' Compensation Judge concluded that, as the claimant was injured while rendering aid to the employee that fell into the pit, he was acting within the course of employment at the time of his injuries.

On appeal, the defendant first argued for a narrower interpretation of Section 601(a)(10)(i)-(ii), specifically, that these provisions only apply to a limited class of volunteer emergency personnel. The defendant then argued that, even if Section 601(a)(10)(ii) does apply to all employees, it does not provide that an employee remains within the course of employment just because an emergency arises and the employee renders aid. The defendant argued that the facts of the present case do not satisfy either of the tests set forth above regarding the course and scope of employment. The defendant alleged that the claimant was not acting to further the defendant's business or affairs and that the claimant's activities as a "Good Samaritan" were not work related.

In response, the claimant argued that, unlike the claimant in *Kmart*, he was on duty and actively engaged in the furtherance of his employer's business at the time the emergency arose and that he merely took a momentary departure from those duties when he went to render aid. He further argued that Section 601(a)(10)(i)-(ii) is not limited to volunteer emergency personnel, and that Section 601(a)(10)(i)-(ii) is entirely consistent with *Kmart*, as it does not remove the employee from the course of employment while attempting to render aid, nor does it place the employee within the scope of employment solely because they are rendering aid.

The Commonwealth Court concluded that the claimant's arguments were correct based on the text, structure, and intent of Section 601(a) as well as the act as a whole. The court also noted that this

position is supported by the precedent addressing temporary departures from workplace duties that do not remove an employee from the course and scope of employment.

The court discussed Section 601(a)(1)-(9), which does refer to an expansion of the definition of employee to include various types of volunteers, including fire department, fire companies, ambulance corps, rescue and lifesaving squads, state parks and forest programs, deputy game protectors, waterway patrolmen, forest firefighters, hazardous response teams, and local emergency management. The court then noted that Section 601(a)(10) differs from Sections 1-9, in that Section 601(a)(10) begins with an "employee" and indicates that an employee remains an employee under the act if injured while performing the specifically identified acts. These include preventing a crime or apprehending a criminal under 601(a)(10)(i) and rendering aid or performing a rescue under Section 601(a)(10)(ii). The court concluded that in going to render aid or perform a rescue, the employee does not abandon the course and scope of employment. The court was clear, however, that the act of rendering aid will not pull an employee into the course and scope of employment, but that an employee already engaged in the course and scope of employment does not abandon that employment by going to the aid of another person.

The court compared the departures to render aid to the small temporary departures from work to tend to personal comforts or convenience. The court noted that Section 601(a)(10) brings the act of aiding another into a similar category as those momentary departures for personal comfort and do not constitute an abandonment of employment or an act so inherently high risk as to be wholly foreign to employment.

Defendant argued that this application of Section 610 is absurd, as it provides benefits for employees rendering aid even if the employee is not a trained professional or trained volunteer. The Commonwealth Court rejected this argument, noting that the General Assembly was very specific in Subsections 1-9, denoting different classes of trained personnel covered by Section 601(a) before providing for a more general category of employees engaged in certain specified acts under Section 601(a)(10).

Finally, the defendant argued that utilizing Section 601(a)(10)(i)-(ii) to apply to employees who render aid without an employment duty to do so is contrary to the Supreme Court's holding in *Kmart*. The Commonwealth Court rejected this argument and found no conflict exists between Section 601 and *Kmart*. The court noted that neither *Kmart* nor Section 601(a)(10)(i)-(ii) relies on the tangential goodwill that may be created by employees rendering aid. Instead, both the Section and *Kmart* hinge on whether the employee is within the course and scope of employment when the employee renders aid to another and whether that aid falls within the two distinct categories set forth in Section 601(a)(10)(i)-(ii).

*Continued on page 10*

## A View from the Bench

*Continued from page 9*

In analyzing Section 601(a)(10)(i)-(ii) the court confirmed that the key questions are: (1) whether the individual falls under the definition of an employee within the meaning of the act; (2) whether the action taken by the employee falls within the two categories specified under Section 601(a)(10)(i)-(ii); and (3) whether the employee acted under Section 601(a)(10)(i)-(ii) while otherwise within the course and scope of employment. In making that determination, the two tests established under Section 301(c) are still applicable.

In this case, the claimant was an employee whose job duties required him to be present on the borough's property while engaged in the installation of a new pipeline. While actively engaged in that process, the claimant heard a call for help from elsewhere on the borough's property, and he and his fellow employees went to render aid. It was while engaged in the process of rendering aid that he was injured. Thus the claimant was actively engaged in furthering his employer's business when the emergency arose, and he was actively engaged in rendering aid under Section 601(a)(10)(ii) when the injury took place. Therefore, he was within the course and scope of his employment.

The Commonwealth Court affirmed the order of the Workers' Compensation Appeal Board.

### **Should Interest On Past Due Benefits Be Simple or Compound Interest?**

*James Tobler v WCAB (Verizon Pennsylvania, Inc.)*, No. 2211 C.D. 2014, 2015 WL 4130636, Pa. Cmwlth., filed July 9, 2015, the court addressed a single question, namely whether the act requires the use of simple interest or compound interest. The facts are not in dispute. By decision and order issued in 2012, a Workers' Compensation Judge awarded a reinstatement of benefits effective November 2002. The defendant issued the past due benefits along with the payment of simple interest. The claimant filed a penalty petition alleging that the defendant should have paid compound interest rather than simple interest. The penalty petition was assigned to a second Workers' Compensation Judge, who denied the penalty petition. In denying the petition, the second Workers' Compensation Judge found no violation of the act. Specifically, the judge cited Section 406.1(a) of the act, 77 P.S. § 717.1(a) and several 1930's era cases from the Superior Court, *Kessler v. North Side Packing Co.*, 186 A. 404, 409 (Pa. Super. 1936), *Petrulo v. O'Herron Co.*, 186 A. 397 (Pa. Super. 1936) and *Graham v. Hillman Coal and Coke Co.*, 186 A. 400 (Pa. Super. 1936), in concluding that the claimant was only entitled to simple interest, and thus no violation had occurred.

Claimant appealed to the Workers' Compensation Appeal Board, arguing that he was entitled to

compound interest, rather than simple interest, under several different theories. Initially, the claimant cited to the humanitarian purposes of the act in support of his claim for compound interest. The claimant also argued that the interest that had accrued on the unpaid compensation was, in and of itself, additional compensation upon which interest should accrue. The claimant cited *B.P. Oil v. WCAB (Patrone)*; *Lastoka v. WCAB (Wheeling-Pittsburgh Steel Corp.)*, 413 A.2d 481 (Pa. Cmwlth. 1980) and *Mathies Coal Co. v. WCAB (Kozlevchar)*, 399 A.2d 790 (Pa. Cmwlth. 1979) in supporting his contention. The Appeal Board rejected this argument and noted that the Pennsylvania courts have not treated interest the same as compensation and in fact treat them as two distinct items. *See, Fields v. WCAB (City of Phila.)*, 49 A.3d 454 (Pa. Cmwlth. 2012). The board indicated that the purpose of interest was to provide additional compensation to the the claimant for the delay during which the employer had use of the funds, and was not for the purpose of penalizing the employer.

The board went on to explain that while Section 406.1(a) does not specify whether the interest is to be "simple" or "compound," the Supreme Court of Pennsylvania has held that simple interest is to be preferred over compound interest, and compound interest is permitted only where it is specifically authorized by contract or statute. *See, Pa. State Educ. Ass'n with Pa. Sch. Serv. Pers./PSEA v. Appalachia Intermediate Unit 08*, 476 A.2d 360 (Pa. 1984). The board also cites to the General Interest Act, 41 P.S. § 202 and *Carroll v. City of Phila., Bd. Of Pensions & Retirement Mun. Pension Fund*, 735 A.2d 141 (Pa. Cmwlth. 1999); *Spang & Co. v. USX Corp.*, (Pa. Super. 1991).

Claimant appealed the board's decision to the Commonwealth Court. The claimant again asserted that interest awarded under the act is considered additional compensation to the worker and not a penalty against the employer, citing *B.P. Oil*, *Lastoka*, and *Mathies*. The claimant also cited the language of Section 406.1(a), which indicates that interest "shall accrue on all due and unpaid compensation." The claimant also cited to 1998 Appeal Board case, *Bernotas v. PECO Energy Co.*, (Pa. WCAB, No. A97-2500, filed June 26, 1998), 1998 WL 401650, which did award interest on interest, based on an attempt to place the parties into the position they would have occupied had benefits been paid when due. The claimant argued that as most modern financial transactions involve compound rather than simple interest, the courts should move away from simple interest and move toward compound interest. Finally, the claimant cited *Prive v. Stevedoring Servs. Of Am., Inc.*, 697 F.3d 820, 842 (9th Cir. 2012), a decision under the Longshore Act that supports awarding compound interest under that act.

In addressing these arguments, the Commonwealth Court briefly reviewed the history of interest under the Pennsylvania Workers' Compensation Act and cited

*Continued on page 11*

## A View from the Bench

*Continued from page 10*

*Kessler* and *Petrulo* for the proposition that simple interest is to be awarded rather than compound interest. The court further noted that in 1972, the act was amended to increase statutory interest from 6 percent to 10 percent. The Commonwealth Court then reviewed the preference of the Pennsylvania Supreme Court for the use of simple interest rather than compound interest in multiple settings, citing *Powell v. Allegheny County Retirement Board*, 246 A.2d 110 (Pa. 1968), *Ralph Myers Contracting Corp. v. Dep't of Transp.*, 436 A.2d 612 (Pa. 1981), *Moyer v. Berks County Board of Assessment Appeals*, 803 A.2d 833, 843 (Pa. Cmwlth. 2002), and *Heilbrunn v. State Employees' Retirement Bd.*, 108 A.3d 973 (Pa. Cmwlth. 2015).

The Commonwealth Court found the authority cited by the the claimant as less than persuasive, noting that the Appeal Board's decision in *Bernotas* is not binding on the court, or on the board itself, for that matter. The Commonwealth Court again affirmed the longstanding judicial policy disfavoring an award of compound interest, absent explicit statutory language. As a final matter, the court dismissed the reliance on the federal Longshore and Harbor Workers' Compensation Act (Longshore Act), as the court's reasoning in the *Price* case seems to be guided by the fact that interest for the Longshore Act is pegged to the low Treasury bond rate (currently 2.19 percent – see [www.bankrate.com](http://www.bankrate.com)), rather than the statutory rate of 10 percent set forth in the Pennsylvania Workers' Compensation Act. It was this artificially low rate that the court in *Price* was referring to when discussing the economic realities for unpaid compensation under the Longshore Act.

### **Reinstatement: Time Limitations of 500 Weeks and Three Years per Sec. 413(a); Collateral Estoppel**

In *Kane v. WCAB (Glenshaw Glass)*, 1172 C.D. 2013, 2015 WL 3887375, 119 A.3rd 424, Pa. Cmwlth., filed June 25, 2015, the reinstatement issue was whether a reinstatement of claimant's benefits "...based upon his 1999 right shoulder injury was time-barred pursuant to Section 413(a) of the Act, when those benefits were suspended due to his receipt of benefits for the 1995 left shoulder injury." A second issue was whether the reinstatement petition, filed in September 2010, was precluded by collateral estoppel, given previous litigation of a reinstatement petition for the same 1999 injury, which had been filed in January 2006. That litigation had concluded with an opinion of the Commonwealth Court in *Kane v. WCAB (Glenshaw Glass Co.)*, 940 A.2d 572 (Pa. Cmwlth. 2007), (*Kane I*) *appeal denied*, 956 A.2d 437 (Pa. 2008).

The facts and procedural history relevant to this opinion are quite complex, as the claimant had a 1991 injury to the right shoulder, an injury to the left shoulder in 1995, and a second injury to the right shoulder in 1999. Petitions had been filed in 2000 (claim petition for 1999 injury) and in 2006 (reinstatement for 1999 injury). Sometime prior to September 2010, a C&R was

approved with respect to the 1995 injury. Thereafter, the instant reinstatement petition was filed.

The court first addressed the collateral estoppel issue, and it concluded that the 2010 reinstatement petition was not barred pursuant to the principles of collateral estoppel. The court, quoting a significant portion of its opinion in *Kane I*, relied upon its prior opinion and wrote: "Essentially, the Court in *Kane I* determined that issues surrounding the effect of the suspension of Claimant's total disability benefits for his 1999 injury were not ripe for consideration, but that such issues may need to be litigated if and when Claimant's disability benefits for his 1995 shoulder injury ceased. Thus, it cannot be said that the issue now before the Court was decided in *Kane I*."

The court then addressed the limitation issues associated with Section 413(a). After setting forth the applicable language contained in Section 413(a), the court began its analysis of the reinstatement limitations issue with a discussion of the 2013 opinion of the Pa. Supreme Court in *Cozzone V WCAB (Pennsylvania Municipal/East Goshen Township)*, 73 A.3d 526 (Pa. 2013). The court then discussed the 2002 Pa. Supreme Court opinion in *L.E. Smith Glass Company v. WCAB (Clawson)*, 813 A.2d 634 (Pa. 2002), and the Commonwealth Court's 2001 opinion in *Westmoreland Regional Hospital v. WCAB (Stopa)*, 789 A.2d 413 (Pa. Cmwlth. 2001).

In holding that the reinstatement petition could proceed, the court wrote: "Here, because Claimant received compensation for one totally disabling injury (the 1995 injury) *in lieu* of receiving compensation for the other totally disabling injury (the 1999 injury), Claimant must be permitted to seek reinstatement under Section 413(a) within three years after the date of the most recent payment of compensation received *in lieu* of compensation for the 1999 injury, to which he otherwise would have been entitled. See *Cozzone*, 73 A.3d at 542...Claimant's application for reinstatement was not time-barred under Section 4139(a) of the Act because it was filed within three years after the date of the last payment of compensation for his 1995 injury, which claimant received *in lieu* of compensation for the 1999 injury..."

### **Impairment Rating Evaluations – Several Recent Decisions**

In *Verizon Pennsylvania, Inc. v. WCAB (Mills)*, 116 A.3d 1157, (Pa. Cmwlth. Feb. 23, 2015) reported on June 10, 2015, the adjudicated injuries were herniated L5-S1 disc, degenerative disc disease, post lumbar decompression and fusion, post laminectomy syndrome, left foot drop, left leg radiculopathy, chronic pain, right knee and hip pain, and depression. The employer's IRE report found less than 50 percent impairment. Because it was late, which precluded an automatic status change, a modification petition, requiring medical testimony, was necessary.

*Continued on page 12*

## A View from the Bench

*Continued from page 11*

The IRE physician testified that he considered the adjudicated injuries, including the left foot drop, but he did not assign a separate percentage rating to that condition because it was already included in the Spine chapter of the Guides, where the other adjudicated spine injuries were rated. His ratings were: lumbar spine – 14 percent, depression – 30 percent, right hip – 2 percent, right knee – 5 percent. Using the Guides' combined values chart, these totaled 44 percent whole person impairment. The claimant offered medical testimony that his impairment exceeded 50 percent, because his doctor testified that the right knee was 11 percent, not 5 percent. More significantly, he also rated the left foot drop, which he described as a motor deficit, separate from the lumbar spine, and he gave it its own percentage of 15 percent under the Lower Extremity chapter. His combined total was 56 percent.

The WCJ made extensive findings concerning the doctors' respective credibility, found the claimant's doctor more persuasive, and denied the modification petition. The WCAB affirmed, as did Commonwealth Court, giving deference to the WCJ's credibility determinations. The court distinguished it from the *Slessler* decision, *DPW v. WCAB (Slessler)*, 103 A.3d 397 (Pa. Cmwlth. 2014), where the court had reversed and remanded a modification denial, holding that the WCJ's credibility finding there concerning un rebutted IRE physician testimony was not based on competent medical evidence.

In *The Village at Palmerton Assisted Living v. WCAB (Kilgallon)*, No. 334 C.D. 2014, 2015 WL 3645885, Pa. Cmwlth., filed June 12, 2015, a procedurally complicated matter, the employer prematurely filed the LIBC-766 form requesting the appointment of an IRE physician [whose examination, if conducted, would have been invalid under *Dowhower v. WCAB (Capco Contracting)*, 919 A.2d 913 (Pa. 2007)]. Realizing its error, it notified the BWC by letter and requested leave to submit a new appointment request form. The BWC initially replied that, not only could it not correct the employer's error, it would reject a new, timely request until the first one was acted on. After some §314 litigation between the employer and the claimant, as well as correspondence with the BWC (which did not include a second LIBC appointment request form), the employer obtained from the BWC a new IRE doctor and examination date, but now well-past the 60-day *Gardner* window [*Gardner v. WCAB (Genesis Health Ventures, et al.)*, 888 A.2d 758 (Pa. 2005)]. Nevertheless, after a less than 50 percent impairment rating was issued, the employer filed an automatic change of status based on the earlier exchange of correspondence with the BWC, which it asserted authorized the consideration of the premature request as having been filed as of a later, timely date.

New litigation with the claimant, who filed the expected review petition, ensued. The employer relied on the IRE report and did not depose the IRE physician. The

WCJ granted the claimant's petition, restored him to total disability status, and voided the automatic IRE status change because the employer had not submitted a second, timely LIBC-766 form. The WCAB affirmed, but on different grounds, voiding the status change because the IRE was not both requested and the appointment scheduled within 60 days.

Commonwealth Court reversed both the WCJ and WCAB decisions, and it granted the automatic change of status as of the examination date. It found that the WCJ had elevated form over substance, holding that a completed LIBC-766 form requesting designation of an IRE physician was not a requirement. The BWC had accepted a letter, sent within 60 days of the expiration of 104 weeks of total disability benefit status, with the previous LIBC form attached. The court held that the employer's actions were sufficient to meet the statutory requirement. It also held that the WCAB erred by finding that both LIBC-766 and the LIBC-765 (the form requiring attendance at the IRE) had to be filed within that 60-day window. It found that *Gardner* and *Dowhower* require only that the request for designation must be submitted within 60 days, not the notice scheduling the appointment. There was a dissent.

In *Duffey v. WCAB (Trola-Dyne, Inc.)*, No. 1840 C.D. 2014, 2015 WL 3915955, (Pa. Cmwlth. filed June 26, 2015), the claimant underwent an IRE, during which the physician used the injury description in effect at the time of the examination and found a whole person impairment of less than 50 percent. The claimant filed a review petition within 60 days concerning the IRE finding, as well as a petition to amend and expand the injury description. The WCJ found that the claimant suffered work-injury-related mental injuries of post-traumatic stress disorder and adjustment disorder in addition to his acknowledged physical injuries and added them to the description of injury. The claimant did not present a contrary IRE opinion but argued that, since the IRE doctor failed to consider (in fact, could not have considered) the new mental injuries, the IRE should be invalidated. The WCJ accepted this contention, granted the IRE review petition, and struck down the IRE change of status.

The WCAB and Commonwealth Court disagreed and restored the change of status. Both held that, as long as the IRE doctor conducts the rating analysis by using the description of the injury *at the time of the examination*, the IRE result is valid and will support the status change. This is so, even though a claimant appeals within the 60-day appeal period and succeeds in expanding the injury description to include injuries not considered or rated. The court noted that a claimant still maintains the right to file a petition to seek reinstatement to total disability status based upon the new injuries, if the claimant can thereby establish a whole person impairment greater than 50 percent.

*Continued on page 13*

## A View From The Bench

*Continued from page 12*

In *Logue v. WCAB (Commonwealth of Pennsylvania)*, No. 1882 C.D. 2014, 2015 WL 4210974, Pa. Cmwlth., filed July 14, 2015, the court held that an employer is not required to seek the agreement with the claimant on the designation of an IRE physician before requesting the BWC to designate one. Here, the employer waited well beyond 104 weeks to seek an impairment rating (10 years, actually). Without consulting the claimant, the employer filed LIBC-766, requesting designation of an IRE physician, and obtained an examination date. The claimant objected and refused to attend. The employer filed a §314 petition, and the claimant was ordered to attend. The claimant appealed, and the WCAB affirmed. The claimant appealed, arguing that §306(a.2)(1) requires that an employer must first request agreement from a claimant before it can pursue appointment by the BWC. The court held that the language “chosen by agreement of the parties, or as designated by the department” provides alternatives, not primary and secondary choices, to obtain an IRE. Even where the IRE is late, as here, and is therefore governed by §306(a.2)(6), not (1), the same rule applies. Of interest, the court cited with approval the unreported decision in *Heugel v. WCAB (US Airways)*, No. 1830 C.D. 2012 (Pa. Cmwlth. filed Feb. 2, 2013), that had reached the same result.

### **Claimant Found to be an Employee, Pursuant to the Construction Workplace Misclassification Act of 2010**

*Scott Lee Staron, d/b/a Lee's Metal Roof Coatings & Painting v. WCAB (Farrier)*, 2015 Pa. Commw. LEXIS 325 (filed July 17, 2015).

The legislature, in 2010, enacted the Construction Workplace Misclassification Act (CWMA). This law, though codified outside the Workers' Compensation Act, has a direct impact on the issue of whether a worker, injured while laboring in the construction business, is entitled to benefits. The CWMA, in this regard, provides that a *construction industry enterprise* has the burden of proof of showing that one of its workers is an independent contractor, as opposed to an employee. It does so by proving certain features of the work relationship. One of those features is the existence of a written contract establishing the worker's independent status. See 43 P.S. §§ 933.1-933.17.

In a new case, *Staron*, the Commonwealth Court has, for the first time, interpreted this new law. The court held that the WCJ ruled correctly in holding that, as a matter of law, an employer could not establish that he retained an injured worker as an independent contractor when the employer had no written contract before the injury but, instead, only one that the worker signed *after* the injury.

In this case, the worker, Farrier, accepted an offer of work from the construction enterprise Lee's Metal Roof Coatings & Painting. The company's principal,

Staron, did not have Farrier sign an independent contractor agreement during the brief, three-day period of Farrier's work. On the third day, Farrier fell from a ladder, striking his head and also sustaining musculoskeletal injuries. After Farrier was released from the hospital, Staron was successful in having him sign an agreement stating, among other things, that he was not an employee but was, instead, an independent contractor. When Farrier nevertheless sought workers' compensation benefits, the WCJ ruled that this post-injury contract was a nullity and hence that Staron necessarily could not prove that Farrier was an independent contractor. The court, on appeal, agreed, holding that for such a contract to be considered in the employee/independent contractor analysis, it must have been executed before any injury. A concurring judge agreed, though suggesting, further, that the agreement need not necessarily be executed before the commencement of all *work*. She also observed that the law required the enterprise to demonstrate many other factors tending to show that the worker was an independent contractor. One of these factors is that the worker maintained his or her own liability insurance. The judge commented that Farrier, who was modestly paid, was not the type of worker who was in a position to secure such coverage.

### **Dramatic Turnaround in Pension Benefit Reporting**

In *Gelvin vs. Workers' Compensation Appeal Board (Pennsylvania State Police)*, No. 1503 C.D. 2014, 2015 WL 4179940, Pa. Cmwlth., filed July 13, 2015, the Commonwealth Court again addressed the timing and manner of an employer taking a pension offset. The opinion indicates that a claimant's filing of the pension benefit offset forms may be fraught with peril.

*Gelvin* involved an injured worker who not only avoided a pension offset, but also obtained unreasonable contest attorney's fees and a 50 percent penalty before a WCJ. This was changed by the WCAB in a reversal of the WCJ and in an affirmation of the WCAB by the Commonwealth Court.

The WCJ in *Gelvin* had concluded that the employer, the State Police, unilaterally took a pension benefit credit. Claimant had won before the WCJ, alleging that she had a financial hardship when the State Police stopped her benefits for approximately a year.

The WCJ reasoned, based on *Maxim Crane v. WCAB (Solano)*, 931 A.2d 816 (Pa. Cmwlth. 2007), that the State Police received the LIBC-756 reporting of pension benefits. The WCJ further reasoned that the State Police did not follow proper pension offset reporting requirements, relying on *Muir v. WCAB (Visteon Systems, LLC)*, 5 A.3rd 847 (Pa. Cmwlth. 2010).

The Commonwealth Court held that an employer does not have a burden of establishing that the pension offset will not create a financial hardship for the claimant. If a claimant wants to challenge the offset

*Continued on page 14*

## A View From The Bench

*Continued from page 13*

based upon a financial hardship, a review petition may be filed in a timely manner. An employer is entitled to a pension benefit offset under the regulatory process of notification to the employee and the sending of the required forms. Commonwealth Court reaffirmed

its prior holdings that an employer has an obligation to send out the pension reporting form (LIBC-756) every six months. The Commonwealth Court lessens the impact of its holding by concluding that WCJs may in future cases “structure” the recoupment order to be “consistent with the humanitarian aspect of the [Workers’ Compensation] Act.”

News & Notes is published quarterly by the Bureau of Workers’ Compensation  
Forward questions or comments about this newsletter to the Bureau of Workers’ Compensation,  
1171 South Cameron Street, Room 324, Harrisburg, PA 17104-2501

Secretary of Labor & Industry .....Kathy M. Manderino  
Deputy Secretary for Compensation & Insurance .....Michael Vovakes  
Director, Bureau of WC.....Scott Weiant  
Director, WC Office of Adjudication..... Elizabeth Crum

WC Web Information  
[www.dli.pa.gov](http://www.dli.pa.gov)